

### REMARKS

After entry of the present amendments Claims 1-31, 33, and 36-38 will be pending. Claim 32 is canceled herein. No new matter is added.

#### Restriction Requirement

The Examiner restricted the claims into four groups: Group I (claims 1-20), Group II (claims 21-30), Group III (claims 32), and Group IV (claims 33).

Applicants note that the Examiner did not include Claims 31 and 36-38 in the restricted groups. Applicants submit that Claims 31 and 36-38 depend from Claim 1 and should be examined with Group I.

Applicants again elect Group I with traverse. Applicants respectfully request rejoinder of the claims of Group II (Claims 21-30) and Group IV (Claim 33).

#### Rejoinder of Groups I and II

The Examiner found that there was no corresponding technical feature between Groups I-IV because the composition as claimed were known in the art. The Examiner based this finding on the disclosure in Suzuki (JP 57122775) and Dake (U.S. Patent No. 5,424,082). Office Action at page 3. The Examiner found that "Suzuki discloses a composition comprising fructose, gluconic acid and oligosaccharides." *Id.* The Examiner further found that Dake "teaches that fruit juice comprises glucose, lactose, fructose, maltose, galactose and sucrose. *Id.* Applicants respectfully disagree with the Examiner because Suzuki and Dake fail to disclose various features of the pending claims, specifically compositions containing non-lactose oligosaccharides.

Suzuki discloses a process wherein an isomerized sugar containing 80-90 wt% fructose is treated with a glucose oxidase and a catalase to give a given fructose/gluconic acid ratio of 8:50, whereby most of the glucose is consumed. The Examiner states that Suzuki discloses a composition comprising oligosaccharides without providing any support. Suzuki is silent regarding non-lactose oligosaccharides. The Examiner has failed to provide any evidence or reasoning to support that non-lactose oligosaccharides would be inherently produced by the

process disclosed in Suzuki. Thus, contrary to the finding by the Examiner, the English abstract of Suzuki fails to explicitly or inherently disclose non-lactose oligosaccharides.

Dake discloses that "The carbohydrate sweetener is preferably a mono- and or disaccharide sugar such as maltose, lactose, galactose, sucrose, glucose, fructose, invert sugars and mixtures thereof". (col. 6, line 56 to col. 7, line 62). Mono and disaccharides are not oligosaccharides. Dake fails to disclose explicitly or inherently the use of non-lactose oligosaccharides.

Therefore, Dake and Suzuki fail to disclose the features of Claims 1 and 21, which recite non-lactose oligo-saccharides. Accordingly, Group I, which reads on Claims 1-20, 31, and 36 along with Group II, which reads on Claims 21-30 are novel over Dake. Accordingly, Applicants respectfully request rejoinder of Group II with Group I.

*Rejoinder of Groups I and IV*

The Examiner found U.S. Patent No. 4,288,619 to Devos to disclose a mother liquor comprising crystalline galactose (col. 4, lines 46-51). Applicants submit that the recited processes and compositions are different from the methods and compositions disclosed in Example 1 of Devos. Claim 33 recites a composition comprising the mother liquor produced by the process of Claim 31, which depends from Claim 1. Thus, the mother liquor would contain some of the materials in the composition of Claim 1, including non-lactose oligosaccharides. Devos fails to disclose a composition with a non-lactose oligosaccharide. Thus, Applicants submit that Claim 33 is novel over Devos.

Accordingly, Group I, which reads on Claims 1-20, 31, and 36 along with Group IV, which reads on Claim 33 is novel over Devos. Accordingly, Applicants respectfully request rejoinder of Group IV with Group I.

Applicants note that Devos is not listed on the Notice of References Cited by the Examiner. Applicants respectfully request that Devos is listed as considered by the Examiner.

*Species election*

The Examiner also required the election of various species. Applicants elect hydrolysis by enzymatic means with the enzyme sourced from species *Kluyveromyces*. Applicants elect

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isomerisation by enzymatic means with the enzyme sourced from species *Bacillus*. Applicants elect oxidation by enzymatic means with the enzyme sourced from species *Penicillium*. Applicants also elect the use of catalase with the enzyme sourced from species *Aspergillus niger*.

Applicants submit that Claims 1-12, 15, 17-23, 31, 33, and 36-38 are readable on the elected species.

Upon allowance of a generic claim, Applicants respectfully request rejoinder of any withdrawn claims.

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

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By: David K. Buckingham  
David K. Buckingham  
Registration No. 60,695  
Attorney of Record  
Customer No. 20,995  
(415) 954-4114